
TITLE 329 SOLID WASTE MANAGEMENT DIVISION

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #16-93****UPDATES TO HAZARDOUS WASTE RULES****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [329 IAC 3.1](#). IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Environmental Rules Board (board) for consideration of adoption of these rules.

CITATIONS AFFECTED: [329 IAC 3.1-1-2](#); [329 IAC 3.1-1-6](#); [329 IAC 3.1-1-7](#); [329 IAC 3.1-1-10](#); [329 IAC 3.1-4-5](#); [329 IAC 3.1-5-1](#); [329 IAC 3.1-5-7](#); [329 IAC 3.1-6-2](#); [329 IAC 3.1-7-2](#); [329 IAC 3.1-8-3](#); [329 IAC 3.1-13-6](#); [329 IAC 3.1-13-21](#).

AUTHORITY: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-15-2-1](#); [IC 13-19-3](#); [IC 13-22-2](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-8](#) recognizes that, under certain circumstances, it may be appropriate to reduce the number of public comment periods and public hearings usually provided for under the [IC 13-14-9](#) environmental rulemaking process. In cases where the commissioner determines that there is no reasonably anticipated benefit from a second public comment period and first public hearing to either the environment or persons regulated or otherwise affected by the proposed rule, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for adoption. Two opportunities for public comment (with this notice and at the public hearing prior to adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by [IC 13-14-9-8](#), the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-8](#).

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) an amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in [IC 13-14-9-7\(a\)\(2\)](#) from:

(A) exposing the rule to diverse public comment under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

(B) affording interested or affected parties the opportunity to be heard under [IC 13-14-9-3](#) or [IC 13-14-9-4](#); and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under [IC 13-14-9-3](#) and [IC 13-14-9-4](#).

BACKGROUND

In accordance with 42 U.S.C. 6926, the United States Environmental Protection Agency (U.S. EPA) granted authorization to IDEM to administer and enforce a hazardous waste program in Indiana. To maintain authorization for this program, IDEM must comply with the requirements for state authorization in 40 CFR 271, Subpart A. Activities related to administering the hazardous waste program include permitting, compliance, monitoring, enforcement, and providing technical assistance.

In accordance with the state authorization requirements, Indiana is required to revise its hazardous waste program by adopting recent amendments to federal hazardous waste regulations. Indiana's hazardous waste rules must be as stringent as those adopted by U.S. EPA, with the option of adopting more stringent state requirements, if appropriate, for a particular situation. When U.S. EPA promulgates a final rule that is less stringent than the previous requirements, Indiana may maintain more stringent requirements or adopt the less stringent requirements to maintain consistency with U.S. EPA hazardous waste rules and potentially offer cost savings and regulatory flexibility for regulated entities.

For this rulemaking, IDEM is using the abbreviated rulemaking process authorized in [IC 13-14-9-8](#) because the proposed rulemaking is incorporating by reference U.S. EPA final rules that amend hazardous waste requirements and does not include any amendments that will have a substantive effect on the scope or application of the federal rule. IDEM also is proposing the adoption of the amendments in the U.S. EPA final rules to maintain equivalent and consistent requirements for IDEM's authorized hazardous waste program. In addition, the rulemaking contains technical corrections and clarifications that will not have an effect on the existing rule.

IDEM has developed draft rule language that amends [329 IAC 3.1](#) in order to adopt the July 1, 2015, version of the Code of Federal Regulations (CFR) for the incorporation by reference of 40 CFR 260 through 40 CFR 270 and 40 CFR 273, including amendments to the hazardous waste requirements in recently promulgated U.S. EPA final rules. This rulemaking will adopt the amendments from the following U.S. EPA final rules:

- On February 7, 2014, at 79 FR 7518, U.S. EPA published a final rule for modification of the hazardous waste manifest system that establishes requirements to authorize the use of electronic manifests for tracking hazardous waste. Authorized states are required to adopt this final rule because the amendments to the CFR are more stringent than previous requirements. IDEM is proposing adoption of these rules without amendment and incorporating the rules by reference at [329 IAC 3.1](#).
- On June 26, 2014, at 79 FR 36220, U.S. EPA published a final rule for revisions to the export provisions of the cathode ray tube (CRT) final rule originally published on July 28, 2006, at 71 FR 42928. Authorized states are required to adopt this final rule because the amendments to the CFR are more stringent than previous requirements. IDEM is proposing adoption of these rules without amendment and incorporating the rules by reference at [329 IAC 3.1](#).
- On January 13, 2015, at 80 FR 1694, U.S. EPA published a final rule with revisions to the definition of solid waste that encourage the reclamation of certain hazardous secondary materials rather than disposal or incineration of the materials while also sufficiently protecting human health and the environment. The final rule contains additional revisions to a U.S. EPA final rule promulgated on October 30, 2008, at 73 FR 64668, that made related revisions to the definition of solid waste for certain hazardous secondary materials. The 2015 final rule amends and deletes some requirements of the 2008 final rule, while also adding new requirements. IDEM, along with the majority of states, never adopted the amendments from the 2008 final rule because of concerns from various stakeholders regarding the implementation of the new requirements. U.S. EPA published a proposed rule in the Federal Register on July 22, 2011, to resolve the concerns and collect input from interested stakeholders, with the accompanying final rule published on January 13, 2015. By adopting the July 1, 2015, version of 40 CFR 260 through 40 CFR 270 and 40 CFR 273, IDEM is adopting the requirements in the 2015 final rule, including any amendments or deletions made to the requirements in the 2008 final rule. Because IDEM did not adopt the requirements in the 2008 final rule, this rulemaking also adopts any requirements in the 2008 final rule that have not been modified or deleted since the promulgation of the rule.
- On April 8, 2015, at 80 FR 18777, U.S. EPA published a response to the vacatur of the comparable fuels exclusion and the gasification exclusion ordered by the United States Court of Appeals for the District of Columbia Circuit on June 27, 2014. The court vacatur is for previously promulgated U.S. EPA final rules regarding exclusions from the definition of hazardous waste for comparable fuels and oil-bearing hazardous secondary materials inserted into gasification units. In response, U.S. EPA removed provisions at 40 CFR 261.4(a)(16) and 40 CFR 261.38 and revised 40 CFR 261.4(a)(12)(i). With the vacatur and U.S. EPA final rule, the previously excluded materials return to more stringent hazardous waste requirements. Authorized state hazardous waste programs that previously adopted the vacated final rules have been encouraged to expeditiously remove the exclusions from their hazardous waste rules. Because IDEM's current hazardous waste rules still include the requirements from the vacated final rules, IDEM is proposing to delete the related requirements at [329 IAC 3.1-1-7\(a\)\(3\)](#) and [329 IAC 3.1-6-2\(19\)](#). The requirements proposed for deletion incorporate by reference the amendments published at 75 FR 33716 through 75 FR 33724 on June 15, 2010, for these exclusions from the definition of hazardous wastes. The requirements at [329 IAC 3.1-1-7\(a\)\(3\)](#) and [329 IAC 3.1-6-2\(19\)](#) are no longer applicable with the now vacated U.S. EPA final rules.

In addition to incorporating by reference the recent U.S. EPA final rules for hazardous waste, this rulemaking proposes technical amendments in [329 IAC 3.1](#) to correct errors for materials incorporated by reference, statutory citations, and contact information. Also, the proposed amendments at [329 IAC 3.1-1-10](#), [329 IAC 3.1-7-2](#), and [329 IAC 3.1-8-3](#) correct technical errors in existing rule requirements. IDEM is including these technical amendments to clarify existing rules without having an effect on the scope or application of the rules. IDEM continues to review and amend outdated or incorrect rule language throughout [329 IAC 3.1](#), when the opportunity is available.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana, contains no amendments that have a substantive effect on the scope or application of the federal rule, and contains technical amendments with no substantive effect on existing Indiana rules.

Potential Fiscal Impact

Any potential fiscal impact resulting from this rulemaking is related to the amended requirements in the U.S. EPA final rules that IDEM is proposing to incorporate by reference. Because IDEM is not proposing any additional amendments to the U.S. EPA requirements, this rulemaking will not have an additional fiscal impact deriving from IDEM-initiated rule amendments.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Dan Watts, Rules Development Branch, Office of Legal Counsel at (317) 234-5345 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Patricia Daniel
IDEM Small Business Regulatory Coordinator
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-6562 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 4-4-35-8](#) is:

Erik Scheub
Office of Small Business and Entrepreneurship
One North Capitol, Suite 600
Indianapolis, IN 46204
(317) 232-5679
ombudsman@osbe.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 4-4-35-8](#), specifically [IC 4-4-35-8\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Steven N. Howell
IDEM Small Business Assistance Program Ombudsman
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8587 or (800) 451-6027
snhowell@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on updates to hazardous waste rules as required by federal rule. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt amendments to the hazardous waste rules as established in 42 U.S.C. 6926 and 40 CFR 271, if the amendments are more stringent than previous federal requirements.
- (3) Indiana adopts federal requirements that are less stringent than previous requirements to maintain consistency and reduce possible confusion between state and federal requirements.
- (4) The environment and persons regulated or otherwise affected by the proposed rule will benefit from prompt adoption of this rule, because IDEM's hazardous waste rules will be equivalent and consistent with recent amendments to U.S. EPA's hazardous waste rules designed to protect public health and the environment.
- (5) I have determined that, under the specific circumstances pertaining to this rule, there would be no reasonably anticipated benefit to the environment or to persons regulated or otherwise affected by the proposed rule from the first or second written comment period under [IC 13-14-9-3](#) or [IC 13-14-9-4](#), or from

- the first public hearing under [IC 13-14-9-5\(a\)\(1\)](#).
(6) The draft rule is hereby incorporated into these findings.

Carol S. Comer
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #16-93 Hazardous Waste Updates
Dan Watts
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251
- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.
- (3) By electronic mail to dwatts1@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**
- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than April 15, 2016. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [329 IAC 3.1-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-1-2](#) Scope

Authority: [IC 13-14-8](#); [IC 13-19-3](#); [IC 13-22-2](#)

Affected: [IC 13-11-2](#)

Sec. 2. This article establishes:

(1) standards for:

(A) identifying hazardous waste; ~~as well as standards for and~~

(B) hazardous waste management procedures for:

(i) generators;

(ii) transporters; and

(iii) owners and operators of hazardous waste facilities; ~~previously regulated under [329 IAC 3](#). This article also replaces and~~

(2) the permit program for hazardous waste facilities. ~~which were regulated by [329 IAC 3](#). Any reference in this article to standards, procedures, and requirements of 40 CFR 260 through 40 CFR 270 shall constitute the full adoption by reference of the part, subpart, and paragraph so referenced including any notes and appendices as may be associated, unless otherwise stated.~~

(Solid Waste Management Division; [329 IAC 3.1-1-2](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 908; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 2. [329 IAC 3.1-1-6](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-1-6](#) Penalties

Authority: [IC 13-14-8](#); [IC 13-19-3](#); [IC 13-22-2](#)

Affected: [IC 13-22-14](#); [IC 13-30](#)

Sec. 6. Penalties for violations of this article are as outlined in [IC 13-7](#) [IC 13-30](#).

(Solid Waste Management Division; [329 IAC 3.1-1-6](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 3. [329 IAC 3.1-1-7](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-1-7](#) References to the Code of Federal Regulations

Authority: [IC 13-19-3-1](#); [IC 13-22-2](#)

Affected: [IC 4-22-2-21](#); [IC 13-14-8](#)

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean **Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) means** the version of that publication revised as of July 1, 2008, **2015, edition.** and amended as published in the Federal Register on:

- (1) December 1, 2008, at 73 FR 72954 through 73 FR 72960;
- (2) January 8, 2010, at 75 FR 1253 through 75 FR 1262;
- (3) June 15, 2010, at 75 FR 33716 through 75 FR 33724;
- (4) September 22, 2010, at 75 FR 57687 through 75 FR 57688;
- (5) December 17, 2010, at 75 FR 78926;
- (6) December 20, 2010, at 75 FR 79308;
- (7) June 13, 2011, at 76 FR 34153 through 76 FR 34157;
- (8) April 13, 2012, at 77 FR 22232;
- (9) July 31, 2013, at 78 FR 46484 through 78 FR 46485; and
- (10) January 3, 2014, at 79 FR 363 through 79 FR 364.

(b) When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11.

(c) The following publications are also incorporated by reference:

- (1) 40 CFR 146, revised as of July 1, 2005.
- (2) 40 CFR 60, Appendix A-1, revised as of July 1, 2005.
- (3) 40 CFR 60, Appendix A-2, revised as of July 1, 2005.
- (4) 40 CFR 60, Appendix A-3, revised as of July 1, 2005.
- (5) 40 CFR 60, Appendix A-4, revised as of July 1, 2005.
- (6) 40 CFR 60, Appendix A-5, revised as of July 1, 2005.
- (7) 40 CFR 60, Appendix A-6, revised as of July 1, 2005.
- (8) 40 CFR 60, Appendix A-7, revised as of July 1, 2005.
- (9) 40 CFR 60, Appendix A-8, revised as of July 1, 2005.

(d) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsections (a) through (c). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or online at <http://bookstore.gpo.gov/>. The telephone number for the Superintendent of Documents is (202) 512-1800 or toll free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

(e) **(b)** Where exceptions to incorporated federal regulations are necessary, these exceptions ~~will be~~ **are** noted in the text of the rule. ~~In addition, all references to administrative stays are deleted.~~

(f) ~~Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.~~

(g) ~~The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions that may be effective in Indiana that are not incorporated in this article or are retained as federal authority.~~

(Solid Waste Management Division; [329 IAC 3.1-1-7](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2661; filed Jun 9, 2006, 3:40 p.m.: [20060712-IR-329050066FRA](#), eff Sep 5, 2006; filed Dec 26, 2007, 1:44 p.m.: [20080123-IR-329060556FRA](#); filed Sep 11, 2009, 2:39 p.m.: [20091007-IR-329080673FRA](#); filed Aug 27, 2010, 11:54 a.m.: [20100922-IR-329090613FRA](#); filed May 29, 2012, 3:20 p.m.: [20120627-IR-329110090FRA](#); filed Mar 15, 2013, 2:44 p.m.: [20130410-IR-329120506FRA](#); filed Jun 3, 2015, 1:21 p.m.: [20150701-IR-329140288FRA](#); errata filed Jul 7, 2015, 10:44 a.m.: [20150729-IR-329150202ACA](#))

SECTION 4. [329 IAC 3.1-1-10](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-1-10](#) Notification

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22](#)

Sec. 10. Every hazardous waste generator, transporter, or owner or operator of a hazardous waste facility shall notify the commissioner of such activities **subject to this article** on forms provided by the commissioner unless such the activity is exempt from the notification requirements for hazardous waste generated by **conditionally exempt** small quantity generators under [329 IAC 3.1-6](#).

(Solid Waste Management Division; [329 IAC 3.1-1-10](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 910; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 5. [329 IAC 3.1-4-5](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-4-5](#) "Board" defined

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-11-2-17](#); [IC 13-13-8](#)

Sec. 5. "Board", as used in this article, means the SWMB as created by [IC 13-19-2](#) **environmental rules board**.

(Solid Waste Management Division; [329 IAC 3.1-4-5](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 921; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 6. [329 IAC 3.1-5-1](#) IS AMENDED TO READ AS FOLLOWS:

Rule 5. Rulemaking Petitions, Exemptions, and Additional Federal Procedures

[329 IAC 3.1-5-1](#) Purpose; scope; applicability

Authority: [IC 13-14-8](#); [IC 13-22-2](#)

Affected: [IC 4-21.5](#)

Sec. 1. (a) This rule establishes standards, criteria, and procedures for the following:

(1) General rulemaking petitions.

- (2) Petitions for equivalent testing or analytical methods.
- (3) Petitions to exclude a waste produced at a particular facility.
- (4) Exemptions to be classified as solid waste.
- (5) Exemptions to be classified as a boiler.
- (6) Additional regulation of certain hazardous waste recycling activities.
- (7) Exemptions from land disposal restrictions.
- (8) Notification and legitimate recycling of secondary hazardous materials.**

(b) Final decisions of the commissioner made pursuant to this rule are subject to the notice requirements and procedures prescribed under [IC 4-21.5](#).

(Solid Waste Management Division; [329 IAC 3.1-5-1](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 923; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 7. [329 IAC 3.1-5-7](#) IS ADDED TO READ AS FOLLOWS:

[329 IAC 3.1-5-7](#) Notification and legitimate recycling of hazardous secondary materials; adoption of federal procedures

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 4-22-2-21](#); [IC 13-22-2](#)

Sec. 7. (a) The notification and legitimate recycling requirements for hazardous secondary materials contained in 40 CFR 260.42* and 40 CFR 260.43* are incorporated by reference, with substitutions noted in subsection (b).

(b) Delete "EPA Form 8700-12" and insert "forms provided by the commissioner" in:

- (1) 40 CFR 260.42(a);**
- (2) 40 CFR 260.42(a)(9);**
- (3) 40 CFR 260.42(b); and**
- (4) 40 CFR 260.43(a)(4)(iii).**

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 732 North Capitol Street NW, Washington, D.C. 20401, viewed at www.gpo.gov, or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Solid Waste Management Division; [329 IAC 3.1-5-7](#))

SECTION 8. [329 IAC 3.1-6-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-6-2](#) Exceptions and additions; identification and listing of hazardous waste

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-11-2](#); [IC 13-14-2-2](#); [IC 13-14-10-1](#); [IC 13-22-2-3](#)

~~Sec. 2. Exceptions and additions to federal standards for identification and listing of hazardous waste are as follows:~~ **The following are exceptions, additions, and substitutions to the identification and listing of hazardous waste under 40 CFR 261:**

- ~~(1) This rule identifies only some of the materials that are solid waste as defined by [IC 13-11-2-205](#)(a) and hazardous waste as defined by [IC 13-11-2-99](#)(a), including [IC 13-22-2-3](#)(b).~~ A material that is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if: ~~in the case of:~~
 - ~~(A) in the case of [IC 13-14-2-2](#), the commissioner has reason to believe that the material may be a solid waste within the meaning of [IC 13-11-2-205](#)(a) and a hazardous waste within the meaning of [IC 13-11-2-99](#)(a); or~~
 - ~~(B) an emergency order is issued under [IC 13-14-10-1](#), the statutory elements are established.~~
- (2) Delete 40 CFR 261.2(f) and substitute the following: Respondents in actions to enforce regulations**

implementing [IC 13](#) who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. ~~An example of appropriate documentation is a contract showing that a second person uses the material as an ingredient in a production process.~~ In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(3) References to the "administrator" in 40 CFR 261.10 through 40 CFR 261.11* means the board.

(4) In addition to the requirements outlined in 40 CFR 261.6(c)(2)*, owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to 40 CFR 265.10 through 40 CFR 265.77*.

(5) In addition to the listing of federal hazardous waste incorporated by reference in section 1 of this rule, the wastes listed in section 3 of this rule are added to the listing.

(6) In 40 CFR 261.4(e)(3)(iii)*, delete the words "in the Region where the sample is collected".

(7) In 40 CFR 261.21(a)(3), delete "an ignitable compressed gas" as defined in 49 CFR 173.300" and substitute "a flammable gas as defined in 49 CFR 173.115(a)".

(8) In 40 CFR 261.21(a)(4), delete "an oxidizer" as defined in 49 CFR 173.151" and substitute "an oxidizer as defined in 49 CFR 173.127".

(9) Delete 40 CFR 261.23(a)(8) and substitute "It is a forbidden explosive as defined in 49 CFR 173.54; or would have been a Class A explosive as defined in 49 CFR 173.54 prior to HM-181, or a Class B explosive as defined in 49 CFR 173.88 prior to HM-181.".

(10) (7) Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).

(11) (8) Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.

(12) (9) Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.

(13) (10) Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.

(14) (11) Delete 40 CFR 261.2(e)(1)(i) dealing with use or reuse of secondary materials to make products and substitute section 5 of this rule.

(15) In 40 CFR 261.5(j), delete "if it is destined to be burned for energy recovery" in two (2) places.

(16) In 40 CFR 261.33, remove the entries for the U202 hazardous waste code in the table in paragraph (f).

(17) (12) In addition to the solid wastes excluded in 40 CFR 261.4(b)*, electronic waste or e-waste is excluded, which is any of the following or has the following component:

(A) A circuit board, including a shredded circuit board.

(B) A diode.

(C) A CRT: **cathode ray tube.**

(D) A computer.

(E) An electronic device.

E-waste does not include vehicles, as defined by [IC 13-11-2-245](#), or white goods, as defined by [IC 13-11-2-266](#). Electronic waste is regulated under [329 IAC 16](#) and must comply with all applicable standards and requirements under [329 IAC 16](#).

(18) In 40 CFR 261, Appendix VIII, remove the entries for "Saccharine" and "Saccharin salts" from the table "Hazardous Constituents".

(19) Delete 40 CFR 261.38 as published in the July 1, 2008, edition and substitute the revised text of 40 CFR 261.38 as published at 75 FR 33716 through 75 FR 33724, June 15, 2010.

(20) (13) At 40 CFR 261.4(a)(26)(i)* and 40 CFR 261.4(b)(18)(i)*, delete the phrase "Excluded Solvent-Contaminated Wipes" and substitute the phrase "Excluded Solvent-Contaminated Wipes' or other words indicating the contents of the container".

(14) Delete 40 CFR 261.4(b)(4)(ii).

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 732 North Capitol Street NW, Washington, D.C. 20401, viewed at www.gpo.gov, or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-6-2](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2662; filed Aug 15, 2007, 10:22 a.m.: [20070912-IR-329050181FRA](#); filed May 29, 2012, 3:20 p.m.: [20120627-IR-329110090FRA](#); filed Jun 3, 2015, 1:21 p.m.: [20150701-IR-329140288FRA](#))

SECTION 9. [329 IAC 3.1-7-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-7-2](#) Exceptions and additions; generator standards

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#); [IC 13-22-4-3.1](#)

Sec. 2. Exceptions and additions to federal standards for generators are as follows:

- (1) Delete ~~40 CFR 262.12(a)~~ **40 CFR 262.12(b)** and substitute "A generator who has not received an EPA identification number may obtain one by applying on forms provided by the commissioner. Upon receipt of the completed forms, an EPA identification number will be assigned."
- (2) In addition to the requirements of 40 CFR 262.40*, a generator shall keep the reports required by [IC 13-22-4-3.1](#) on file for at least three (3) years after submission to the department.
- (3) Delete 40 CFR 262.41 dealing with biennial reporting and substitute section 14 of this rule.
- (4) In 40 CFR 262.42(a)(2)*, delete "in the Region in which the generator is located".
- (5) Delete 40 CFR 262.43 dealing with additional reporting and substitute section 15 of this rule.
- (6) In 40 CFR 262.53* and 40 CFR 262.54*, references to the "EPA" are retained. A copy of the notification of intent to export, which must be submitted to the EPA, must also be submitted to the ~~Office of Land Quality, Indiana Department of Environmental Management, P.O. Box 7035, Indianapolis, Indiana 46207-7035.~~ **Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Room 1101, Indianapolis, Indiana 46204-2251.**
- (7) Exception reports required from primary exporters pursuant to 40 CFR 262.55* must be filed with the Regional Administrator of the EPA and the commissioner.
- (8) Delete 40 CFR 262.56 dealing with annual reports for exports and substitute section 16 of this rule.
- (9) In 40 CFR 262.57(b)*, the reference to the "administrator" is retained. The commissioner may also request extensions of record retention times for hazardous waste export records.
- ~~(10) The amendments to 40 CFR 262.34 that implement the National Environmental Performance Track Program for hazardous waste generators that are Performance Track members, published in the Federal Register at 69 FR 21753 through 69 FR 21754 on April 22, 2004, are incorporated by reference.~~

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 732 North Capitol Street NW, Washington, D.C. 20401, viewed at www.gpo.gov, or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

(Solid Waste Management Division; [329 IAC 3.1-7-2](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1875; filed Jun 9, 2006, 3:40 p.m.: [20060712-IR-329050066FRA](#), eff Sep 5, 2006)

SECTION 10. [329 IAC 3.1-8-3](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-8-3](#) Hazardous waste discharges; additional state requirements

Authority: [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#)

Sec. 3. (a) Whenever a spill or release of hazardous waste occurs, **the transporter of hazardous waste shall** immediately communicate a spill report to the ~~Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015,~~ **Indiana Department of Environmental Management, Office of Land Quality, Emergency Response Section, at (317) 233-7745 for out-of-state calls, or (888) 233-7745 for in-state calls (toll-free in Indiana).**

(b) If applicable, ~~immediately,~~ whenever possible, **the transporter of hazardous waste shall immediately** notify the nearest downstream water user.

(c) **The transporter of hazardous waste shall** submit to the office of land quality reports on the spill deemed

necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of [327 IAC 2-6 327 IAC 2-6.1](#).

(Solid Waste Management Division; [329 IAC 3.1-8-3](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; errata filed Nov 24, 1998, 3:03 p.m.: 22 IR 1074; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 11. [329 IAC 3.1-13-6](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-13-6](#) Permit processing

Authority: [IC 13-14-8](#); [IC 13-15-2-1](#); [IC 13-19-4-10](#); [IC 13-22-2-4](#)

Affected: [IC 13-15](#); [IC 13-19-4](#); [IC 13-22-3](#)

Sec. 6. The commissioner shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit in this rule and the requirements of [IC 13-7-10-2](#); [IC 13-19-4](#).

(Solid Waste Management Division; [329 IAC 3.1-13-6](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 942; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 12. [329 IAC 3.1-13-21](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 3.1-13-21](#) Procedures for RCRA standardized permit

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2](#)

Sec. 21. **The RCRA standardized permits procedures at 40 CFR 124, Subpart G, consisting of 40 CFR 124.200 through 40 CFR 124.214, revised as of July 1, 2006, is** **are** incorporated by reference.

(Solid Waste Management Division; [329 IAC 3.1-13-21](#); filed Jul 31, 2009, 8:35 a.m.: [20090826-IR-329080212FRA](#))

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